

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re Application of	)	
	)	
GTE CORPORATION,	)	
Transferor,	)	
	)	
AND	)	CC Docket No. 98-184
	)	
BELL ATLANTIC CORPORATION,	)	
Transferee,	)	
	)	
For Consent to Transfer Control of Domestic and	)	
International Sections 214 and 310 Authorizations	)	
and Application to Transfer Control of a Submarine	)	
Cable Landing License	)	

**ORDER**

**Adopted:** June 20, 2002

**Released:** June 24, 2002

By the Commission:

**I. INTRODUCTION**

1. In this Order, we approve Verizon Communications Inc.'s (Verizon) request to count \$90.5 million of its Northpoint expenditure toward its out-of-region expenditure requirement under the *Bell Atlantic/GTE Merger Conditions*.<sup>1</sup> Based on our conclusion, we find that Verizon properly terminated certain associated discounts and that Verizon has spent a total of at least \$387.9 million toward satisfaction of the relevant condition, including at least \$163.6 million toward the facilities expenditure requirement. Thus, we conclude that Verizon has met the requirement to spend \$300 million by June 30, 2002.

**II. BACKGROUND**

2. To encourage Verizon to enter other incumbent LECs' regions and compete for local customers, the *Bell Atlantic/GTE Merger Order* requires the company to spend \$500 million to provide "Competitive Local Service" outside its territory within three years of merger close (*i.e.*, by June 30, 2003).<sup>2</sup> The *Merger Conditions* define "Competitive Local Service" as "services, including resale, that compete with traditional local telecommunications services offered by incumbent local exchange carriers or . . . Advanced Services to the mass market."<sup>3</sup> The *Merger Conditions* require Verizon to spend at least

<sup>1</sup> See *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14182, ¶ 319, Appendix B, ¶¶ 43-48 (2000) (*Bell Atlantic/GTE Merger Order* or *Bell Atlantic/GTE Merger Conditions*).

<sup>2</sup> See *Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 43.

<sup>3</sup> *Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 43.

half (*i.e.*, \$250 million) “to construct, acquire, lease, use, obtain or provide facilities, operating support systems, or equipment that are used to service customers in Out-of-Region Markets.”<sup>4</sup> The other half may be used to acquire customers for Competitive Local Service in those Out-of-Region Markets.<sup>5</sup>

3. The *Merger Conditions* establish a series of deadlines for the expenditures. Verizon must meet an interim target of \$300 million by two years after merger close (June 30, 2002).<sup>6</sup> If Verizon were to fail to meet the interim target, it would owe the U.S. Treasury 150 percent of the difference between what it spent and what it was obligated to spend. If Verizon does not satisfy the condition in total by June 30, 2003, it must pay the U.S. Treasury 150 percent of the difference between what it spent and what it was obligated to spend.<sup>7</sup> In addition, Verizon may end certain promotional discounts early if it satisfies half of the facilities-based expenditure requirement.<sup>8</sup> In November 2001, Verizon satisfied \$297.4 million of the out-of-region expenditure requirement, including \$113.4 million for facilities, with its purchase of OnePoint, a DSL provider.<sup>9</sup>

4. On February 7, 2002, Verizon proposed to count two new categories of investment toward the out-of-region requirement: (1) \$90.5 million Verizon spent in conjunction with the failed merger with Northpoint Communications Group, Inc. (Northpoint), including \$50.2 toward facilities;<sup>10</sup> and (2) \$20.3 million Verizon spent on synchronous optical network (SONET) and switched voice services in Los Angeles, Seattle and Dallas (all facilities).<sup>11</sup> Verizon arrives at its \$90.5 million Northpoint proposal by multiplying the percentage of Northpoint collocations located outside Verizon’s incumbent region (about 60 percent) by the total \$150 million expenditure. To arrive at the \$50.2 million for facilities, Verizon multiplies the percentage of Northpoint’s assets that are facilities (about 55 percent)

<sup>4</sup> See *Bell Atlantic/GTE Merger Order* at Appendix D, ¶¶ 44-45.

<sup>5</sup> See *Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 43.

<sup>6</sup> See *Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 48.

<sup>7</sup> See *Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 46. For example, if Verizon spends no more between now and July 1, 2003, it would owe the U.S. Treasury \$165 million (\$110.0 million X 150 percent).

<sup>8</sup> Under separate conditions, Verizon must offer promotional discounts to competitive LECs for unbundled local loops used to provide service to residential customers and resold lines used to provide service to residential customers (collectively, “Residential User Discounts”) until the earlier of (1) the date Verizon satisfies 50 percent of the out-of-region requirement (*i.e.*, \$250 million total and \$125 million facilities) or (2) June 30, 2002. See *id.* at ¶¶ 35(a), 37(c); Letter from Carol Matthey, Deputy Chief, Common Carrier Bureau, Federal Communications Commission, to Jeffrey Ward, Senior Vice President – Regulatory Compliance, Verizon, 16 FCC Rcd. 20315, (Nov. 20, 2001) (*CCB OnePoint Letter*). The resold lines discount becomes lower, rather than ending, once the criteria are met. For simplicity, we say in this order that the discounts “end.”

<sup>9</sup> See *CCB OnePoint Letter*. Thus, Verizon must spend an additional \$2.6 million by June 30, 2002 to meet the \$300 million total interim target or make voluntary payments to the U.S. Treasury. To end the Residential User Discounts before June 30, 2002, Verizon must spend \$11.6 million on facilities. While Verizon’s satisfaction of this threshold and the total out-of-region expenditure requirement are subject to our review, the *Merger Conditions* do not require Verizon to obtain approval before ending the discounts. Verizon apparently has concluded that it met the \$11.6 million threshold, because it ended the Residential User Discounts on April 1, 2002.

<sup>10</sup> See Letter from Gordon Evans, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 98-184 (filed May 24, 2002) (*Verizon May 24<sup>th</sup> Letter*). Verizon states that it entered into an “Agreement and Plan of Merger” with Northpoint that required Verizon to make the \$150 million initial payment to Northpoint. See Letter from Dee May, Assistant Vice President, Federal Regulatory, Verizon, to William Caton, Acting Secretary, Federal Communications Commission, at 7-8 (Feb. 7, 2002) (*Verizon February 7 Letter*). After the \$150 million payment, but before closing the merger, Verizon withdrew from the agreement. It retained Northpoint stock, however. See *id.*

<sup>11</sup> See *Verizon May 24<sup>th</sup> Letter*. The Enforcement Bureau will rule separately on the SONET and switched voice expenditures.

by the total \$150 million, yielding \$83 million. Verizon then multiplies \$83 million by the 60 percent out-of-region factor to arrive at \$50.2 million.<sup>12</sup> On March 12, 2002, the Commission staff sought comment on Verizon's Northpoint request.<sup>13</sup> Seven parties filed comments and two filed reply comments.

### III. DISCUSSION

5. We approve Verizon's request to count \$90.5 million (including \$50.2 million for facilities) of its Northpoint expenditure toward the condition. The merger condition gives Verizon three ways to satisfy the facilities expenditure requirement, including making "investments in, or contributions to, ventures that provide Competitive Local Service activity in Out-of-Region Markets by those ventures."<sup>14</sup> We find that Verizon's expenditure is a "contribution to, or investment in, [a] venture[]" that provides Advanced Services to the mass market.<sup>15</sup> We also find that Verizon's method of allocating the total Northpoint expenditure into out-of-region and facilities categories consistent with the method the Common Carrier Bureau approved in its OnePoint decision.<sup>16</sup>

6. Several commenters urge that we deny Verizon's request to count the Northpoint expenditure toward the condition. These parties argue that Verizon did not provide anything as a result of the expenditure because the merger was not consummated.<sup>17</sup> We disagree that the condition requires Verizon to be the service provider. The condition does not require Verizon to itself provide the Competitive Local Service; rather, Verizon must only invest in or contribute to a venture that provides such a service. Because Verizon received Northpoint stock, its expenditure constitutes an investment in Northpoint. The terms "investment" and "contribution" additionally imply some risk on the part of Verizon.<sup>18</sup> The *Merger Conditions* do not require Verizon to do anything more than invest in or contribute money to a venture that provides Competitive Local Service. We note that no party has challenged Verizon's assertion that Northpoint, as a DSL provider, provides "Advanced Services to the mass market."

7. We also disagree with parties who argue that approving Verizon's Northpoint expenditure would be inconsistent with the policy goal of the condition.<sup>19</sup> These commenters rightly note that the *Merger Order* anticipates that out-of-region consumers will benefit from Verizon's investment. We conclude, however, that Verizon's investment was consistent with the underlying policy intent of the merger conditions in that Verizon invested \$150 million (\$90.5 million allocated to out-of-region) in a company that provided an alternative to incumbent LECs. The fact that the alternative provider ultimately proved unsuccessful does not alter our analysis. Finally, we can give no weight to commenters' suggestion that Verizon withdrew from the Northpoint merger to eliminate Northpoint as a

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<sup>12</sup> These numbers are adjusted for rounding. *See generally id.*

<sup>13</sup> *See Common Carrier Bureau Seeks Comment on Verizon's Request to Count Investment In Northpoint Toward Out-of-Region Merger Obligation*, Public Notice, DA 02-567 (rel. Mar. 12, 2002).

<sup>14</sup> *Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 45.

<sup>15</sup> *See Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 45.

<sup>16</sup> *See CCB OnePoint Letter*.

<sup>17</sup> *See, e.g.,* ASCENT Comments at 3; Focal Comments at 2.

<sup>18</sup> *See* BLACK'S LAW DICTIONARY, Abridged Sixth Addition (1991), at 572 ("To purchase securities of a more or less permanent nature, or to place money or property in business venture or real estate, or otherwise lay it out, so that it *may produce* or gain (or both) in the future." (emphasis added)).

<sup>19</sup> *See, e.g.,* WorldCom Comments at 3-4; Covad Comments at 3-4.

competitor.<sup>20</sup> There is no record evidence to support such a conclusion.

#### IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED, pursuant to sections 1-4, 201-205, 214, 251, 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 251, 303(r), and 309 that Verizon's request to count its Northpoint expenditure toward satisfaction of Condition XVI of the *Bell Atlantic/GTE Merger Conditions* IS GRANTED as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>20</sup> See, e.g., AT&T Comments at 2-4; Focal Comments at 2-3.